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Art Unit 2872

Reply to Advisory Action of April 9, 2010.Arguments

The Supervisory Patent Examiner's interpretation of MPEP 2141.01 seems to be that an applicant's own invention can be prior art to him if the art is a patent issued more than one year before the filing date of the pending application. According to the Supervisory Patent Examiner, this can be the case when there is no basis for a rejection under 35 USC 102, and when there is no statutory bar to the pending application.

Applicant believes that the Supervisory Patent Examiner's interpretation of MPEP 2141.01 is mistaken as it is contrary to *In re Fout*, Cust. & Pat. App. 1982, 675 F.2d 297 "Absent statutory bar, applicant's own invention cannot be 'prior art' to him", which the applicant believes is in force today.

There is no statutory bar to the pending application.

Yours sincerely,

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